



General Assembly

January Session, 2009

**Governor's Bill No. 6391**

LCO No. 2807

\*02807\_\_\_\_\_\*

Referred to Committee on Public Health

Introduced by:

REP. CAFERO, 142<sup>nd</sup> Dist.

SEN. MCKINNEY, 28<sup>th</sup> Dist.

**AN ACT CONCERNING REVISIONS TO THE HIV TESTING CONSENT LAW.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-582 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3 (a) Except as required pursuant to section 19a-586, [or by federal or  
4 state law, no person shall order the performance of an HIV-related test  
5 without first receiving written informed consent or oral informed  
6 consent which has been documented in the medical record, of the  
7 subject of the test or of a person authorized to consent to health care  
8 for such individual] a person who has provided general consent as  
9 described in this section for the performance of medical procedures  
10 and tests is not required to also sign or be presented with a specific  
11 informed consent form relating to medical procedures or tests to  
12 determine human immunodeficiency virus infection or antibodies to  
13 human immunodeficiency virus. General consent shall include  
14 instruction to the patient that: (1) As part of the medical procedures or

15 tests, the patient may be tested for human immunodeficiency virus,  
16 and (2) such testing is voluntary and that the patient can choose not to  
17 be tested for human immunodeficiency virus or antibodies to human  
18 immunodeficiency virus. General consent that includes HIV-related  
19 testing shall be obtained without undue inducement or any element of  
20 compulsion, fraud, deceit, duress or other form of constraint or  
21 coercion. If a patient declines an HIV-related test, such decision by the  
22 patient shall be documented in the medical record. The consent of a  
23 parent or guardian shall not be a prerequisite to testing of a minor. The  
24 laboratory shall report the test result to the person who orders the  
25 performance of the test. [Whenever practicable written consent shall be  
26 obtained. A person ordering the performance of an HIV-related test  
27 shall certify that informed consent has been received prior to ordering  
28 testing by a licensed laboratory. No laboratory shall perform an HIV-  
29 related test without a written certification that such consent has been  
30 obtained, or without written certification that testing without consent  
31 is being ordered pursuant to one of the exceptions in subsection (e) of  
32 this section. The Department of Public Health shall develop  
33 recommended forms for health care providers for purposes of this  
34 section. Such forms shall satisfy the requirement for a written consent  
35 form but shall not fully satisfy the requirement for the explanation  
36 pursuant to subsections (b) and (c) of this section. Any form used  
37 pursuant to this section and all information conveyed pursuant to  
38 subsections (c) and (d) of this section shall be written or conveyed in a  
39 clear and coherent manner using plain language as described in  
40 section 42-152.]

41 (b) A person ordering the performance of an HIV-related test shall  
42 not be held liable for ordering a test without specific informed consent  
43 if a good faith effort is made to convey the [explanation] instruction  
44 required pursuant to [subsections (b), (c) and (d)] subsection (a) of this  
45 section. [The department shall develop guidelines for meeting the  
46 requirements of subsections (b), (c) and (d) of this section.]

47 [(b) Informed consent to an HIV-related test shall include a

48 statement provided to the subject of the test or provided to a person  
49 authorized to consent to health care for the subject which includes at  
50 least the following: (1) An explanation of the test, including its  
51 purpose, the meaning of its results, and the benefits of early diagnosis  
52 and medical intervention; (2) acknowledgment that consent to an HIV  
53 test is not a precondition to receiving health care but that refusal to  
54 consent may, in some circumstances, affect the provider's ability to  
55 diagnose and treat the illness; (3) an explanation of the procedures to  
56 be followed, including that the test is voluntary, and a statement  
57 advising the subject on the availability of anonymous testing; and (4)  
58 an explanation of the confidentiality protections afforded confidential  
59 HIV-related information including the circumstances under which and  
60 classes of persons to whom disclosure of such information may be  
61 required, authorized or permitted by law. Such explanation shall  
62 specifically acknowledge that known partners of the protected  
63 individual may be warned of their potential risk of infection without  
64 identifying the protected individual and that the law permits the  
65 recording of HIV and AIDS-related information in medical charts and  
66 records. Informed consent shall be obtained without undue  
67 inducement or any element of compulsion, fraud, deceit, duress or  
68 other form of constraint or coercion.

69 (c) Prior to obtaining informed consent, a person ordering the  
70 performance of an HIV-related test shall provide the subject of an HIV-  
71 related test, or to a person authorized to consent to health care for the  
72 subject, an explanation of the nature of AIDS and HIV-related illness  
73 and information about behaviors known to pose risks for transmission  
74 of HIV infection.]

75 [(d)] (c) At the time of communicating the test result to the subject of  
76 the test, a person ordering the performance of an HIV-related test shall  
77 provide the subject of the test or the person authorized to consent to  
78 health care for the subject with counseling or referrals for counseling,  
79 as needed: (1) For coping with the emotional consequences of learning  
80 the result; (2) regarding the discrimination problems that disclosure of

81 the result could cause; (3) for behavior change to prevent transmission  
82 or contraction of HIV infection; (4) to inform such person of available  
83 medical treatments and medical services; (5) regarding local or  
84 community-based HIV/AIDS support services agencies; (6) to work  
85 towards the goal of involving a minor's parents or legal guardian in  
86 the decision to seek and in the ongoing provision of medical treatment;  
87 [(6)] (7) regarding the need of the test subject to notify his partners and,  
88 as appropriate, provide assistance or referrals for assistance in  
89 notifying partners; except that if the subject of the test is a minor who  
90 was tested without the consent of his parents or guardian, such  
91 counseling shall be provided to such minor at the time of  
92 communicating such test result to such minor. A health care provider  
93 or health facility shall not withhold test results from the protected  
94 individual. The protected individual may refuse to receive his test  
95 result but the person ordering the performance of the test shall  
96 encourage him to receive the result and to adopt behavior changes that  
97 will allow him to protect himself and others from infection.

98 [(e)] (d) The provisions of this section shall not apply to the  
99 performance of an HIV-related test:

100 (1) By licensed medical personnel when the subject is unable to  
101 grant or withhold consent and no other person is available who is  
102 authorized to consent to health care for the individual and the test  
103 results are needed for diagnostic purposes to provide appropriate  
104 urgent care, except that in such cases the counseling, referrals and  
105 notification of test results described in subsection [(d)] (c) of this  
106 section shall be provided as soon as practical;

107 (2) By a health care provider or health facility in relation to the  
108 procuring, processing, distributing or use of a human body or a human  
109 body part, including organs, tissues, eyes, bones, arteries, blood,  
110 semen, or other body fluids, for use in medical research or therapy, or  
111 for transplantation to individuals, provided if the test results are  
112 communicated to the subject, the counseling, referrals and notification

113 of test results described in subsection [(d)] (c) of this section shall be  
114 provided;

115 (3) For the purpose of research if the testing is performed in a  
116 manner by which the identity of the test subject is not known and is  
117 unable to be retrieved by the researcher;

118 (4) On a deceased person when such test is conducted to determine  
119 the cause or circumstances of death or for epidemiological purposes;

120 (5) In cases where a health care provider or other person, including  
121 volunteer emergency medical services, fire and public safety  
122 personnel, in the course of his occupational duties has had a significant  
123 exposure, provided the following criteria are met: (A) The worker is  
124 able to document significant exposure during performance of his  
125 occupation, (B) the worker completes an incident report within forty-  
126 eight hours of exposure identifying the parties to the exposure,  
127 witnesses, time, place and nature of the event, (C) the worker submits  
128 to a baseline HIV test within seventy-two hours of the exposure and is  
129 negative on that test, (D) the patient's or person's physician or, if the  
130 patient or person does not have a personal physician or if the patient's  
131 or person's physician is unavailable, another physician or health care  
132 provider has approached the patient or person and sought voluntary  
133 consent and the patient or person has refused to consent to testing,  
134 except in an exposure where the patient or person is deceased, (E) an  
135 exposure evaluation group determines that the criteria specified in  
136 subparagraphs (A), (B), (C), (D) and (F) of this subdivision are met and  
137 that the worker has a significant exposure to the blood of a patient or  
138 person and the patient or person, or the patient's or person's legal  
139 guardian, refuses to grant informed consent for an HIV test. If the  
140 patient or person is under the care or custody of the health facility,  
141 correctional facility or other institution and a sample of the patient's  
142 blood is available, said blood shall be tested. If no sample of blood is  
143 available, and the patient is under the care or custody of a health  
144 facility, correctional facility or other institution, the patient shall have a

145 blood sample drawn at the health facility, correctional facility or other  
146 institution and tested. No member of the exposure evaluation group  
147 who determines that a worker has sustained a significant exposure and  
148 authorized the HIV testing of a patient or other person, nor the health  
149 facility, correctional facility or other institution, nor any person in a  
150 health facility or other institution who relies in good faith on the  
151 group's determination and performs that test shall have any liability as  
152 a result of his action carried out pursuant to this section, unless such  
153 person acted in bad faith. If the patient or person is not under the care  
154 or custody of a health facility, correctional facility or other institution  
155 and a physician not directly involved in the exposure certifies in  
156 writing that the criteria specified in subparagraphs (A), (B), (C), (D)  
157 and (F) of this subdivision are met and that a significant exposure has  
158 occurred, the worker may seek a court order for testing pursuant to  
159 subdivision (8) of this subsection, (F) the worker would be able to take  
160 meaningful immediate action, if results are known, which could not  
161 otherwise be taken, as defined in regulations adopted pursuant to  
162 section 19a-589, (G) the fact that an HIV test was given as a result of an  
163 accidental exposure and the results of that test shall not appear in a  
164 patient's or person's medical record unless such test result is relevant  
165 to the medical care the person is receiving at that time in a health  
166 facility or correctional facility or other institution, (H) the counseling  
167 described in subsection [(d)] (c) of this section shall be provided but  
168 the patient or person may choose not to be informed about the result of  
169 the test, and (I) the cost of the HIV test shall be borne by the employer  
170 of the potentially exposed worker;

171 (6) In facilities operated by the Department of Correction if the  
172 facility physician determines that testing is needed for diagnostic  
173 purposes, to determine the need for treatment or medical care specific  
174 to an HIV-related illness, including prophylactic treatment of HIV  
175 infection to prevent further progression of disease, provided no  
176 reasonable alternative exists that will achieve the same goal;

177 (7) In facilities operated by the Department of Correction if the

178 facility physician and chief administrator of the facility determine that  
179 the behavior of the inmate poses a significant risk of transmission to  
180 another inmate or has resulted in a significant exposure of another  
181 inmate of the facility and no reasonable alternative exists that will  
182 achieve the same goal. No involuntary testing shall take place  
183 pursuant to subdivisions (6) and (7) of this subsection until reasonable  
184 effort has been made to secure informed consent. When testing  
185 without consent takes place pursuant to subdivisions (6) and (7) of this  
186 subsection, the counseling referrals and notification of test results  
187 described in subsection [(d)] (c) of this section shall, nonetheless be  
188 provided;

189 (8) Under a court order which is issued in compliance with the  
190 following provisions: (A) No court of this state shall issue such order  
191 unless the court finds a clear and imminent danger to the public health  
192 or the health of a person and that the person has demonstrated a  
193 compelling need for the HIV-related test result which cannot be  
194 accommodated by other means. In assessing compelling need, the  
195 court shall weigh the need for a test result against the privacy interests  
196 of the test subject and the public interest which may be disserved by  
197 involuntary testing, (B) pleadings pertaining to the request for an  
198 involuntary test shall substitute a pseudonym for the true name of the  
199 subject to be tested. The disclosure to the parties of the subject's true  
200 name shall be communicated confidentially, in documents not filed  
201 with the court, (C) before granting any such order, the court shall  
202 provide the individual on whom a test result is being sought with  
203 notice and a reasonable opportunity to participate in the proceeding if  
204 he is not already a party, (D) court proceedings as to involuntary  
205 testing shall be conducted in camera unless the subject of the test  
206 agrees to a hearing in open court or unless the court determines that a  
207 public hearing is necessary to the public interest and the proper  
208 administration of justice;

209 (9) When the test is conducted by any life or health insurer or health  
210 care center for purposes of assessing a person's fitness for insurance

211 coverage offered by such insurer or health care center; or

212 (10) When the test is subsequent to a prior confirmed test and the  
213 subsequent test is part of a series of repeated testing for the purposes  
214 of medical monitoring and treatment, provided (A) the patient has  
215 previously given [informed consent and has been counseled  
216 concerning medical treatments and behavioral changes necessary to  
217 reduce HIV transmission, as required by this section] general consent  
218 that includes HIV-related tests, (B) the patient, after consultation with  
219 the health care provider, has declined reiteration of the [specific  
220 informed] general consent, counseling and education requirements of  
221 this section, and (C) a notation to that effect has been entered into the  
222 patient's medical record.

223 [(f) Except as provided in subsection (e) of this section, informed  
224 consent as described in this section shall be obtained for each HIV test,  
225 or in the case where a sequence of tests is required to confirm an initial  
226 positive result, for each sequence of tests.]

227 Sec. 2. Subsection (e) of section 19a-585 of the general statutes is  
228 repealed and the following is substituted in lieu thereof (*Effective July*  
229 *1, 2009*):

230 (e) Except as provided in subparagraph (G) of subdivision (5) of  
231 subsection [(e)] (d) of section 19a-582, as amended by this act, nothing  
232 in this chapter shall prohibit the recording of HIV and AIDS-related  
233 information in the medical chart or medical records of a protected  
234 individual or the listing of AIDS, HIV-related illness or HIV infection  
235 in a certificate of death or autopsy report. This chapter shall not be  
236 construed to modify regulations relating to access to death certificates  
237 or autopsy reports. This chapter shall not be construed to modify the  
238 provisions of section 19a-25 or 19a-221.

239 Sec. 3. Section 19a-588 of the general statutes is repealed and the  
240 following is substituted in lieu thereof (*Effective July 1, 2009*):



241 Each town shall notify its police, fire and emergency medical  
242 services personnel of the procedures under subdivision (5) of  
243 subsection [(e)] (d) of section 19a-582, as amended by this act, and  
244 subdivision (7) of subsection (a) of section 19a-583 pertaining to  
245 workers who have experienced a significant exposure.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	19a-582
Sec. 2	<i>July 1, 2009</i>	19a-585(e)
Sec. 3	<i>July 1, 2009</i>	19a-588

***Statement of Purpose:***

To implement the Governor's budget recommendations and facilitate the national recommendation by the Centers for Disease Control to routinely offer HIV counseling and testing to all adults living in the United States by minimizing legal requirements and barriers to obtaining oral consent for testing.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*